Provisional Award Fee Payments Applicable to CPAF Contracts Only (DFARS 216.405-2)

SMC/PKXF

November 2003

U.S. AIR FORCE

U.S. AIR FORCE

PURPOSE

- **Summarize the changes resulting from DoD's Final Ruling on Provisional Award Fee Payments**
  (Federal Register, 14 Nov 03)
  - **Previously called "interim" award fee payments by AFMC**
- **Obtain approval of changes to SMC's current policy**
  - **Align SMC's policy with the new DoD policy**

U.S. AIR FORCE

OVERVIEW

- **Background on “interim” award fee payments**
- **Summary of DFARS 216-405.2 (effective 13 Jan 04)**
- **New DFARS language vs. SMC Guidance**
- **Recommended update to SMC Guidance**

U.S. AIR FORCE

BACKGROUND

FAR, DFARS, & AFFARS

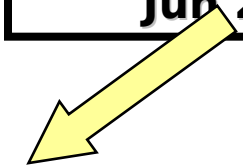
Historically Silent

AFPSC FARS

Silent

AFMC FARS

"Interim Payments" Memo Jun 2002



SMC Policy

"Interim Payments"

Memo Aug 2002

DoD's Final Ruling on Provisional Award Fee Payments

Not congruent with current SMC Policy on "Interim" Payments

New DFARS 216.405-2 Language

U.S. AIR FORCE

Provisional Award Fee Payments

- **Allows provisional award fee payments**
  - **Payments made within an evaluation period prior to a final evaluation for that period**
- **Applicable only to CPAF contract type**
- **Optional use by Contracting Officer**
- **Limitations**
  - **Not more frequently than monthly**
  - **Initial period –**
    - **No more than 50% of the award fee available for that period**
  - **Subsequent periods –**
    - **No more than 80% of the evaluation score for the prior evaluation period**
    - **Example: If the Contractor earned 90% in the prior period**
      - Maximum: 90% x 80% = 72% of the award fee available for the current period.

New DFARS 216.405-2 Language Provisional Award Fee Payments

U.S. AIR FORCE

- **Overpayment Recovery**
  - Provisional payments in excess of FDO final determination – debt collection in accordance with FAR 32.606
- **Provisional Award Fee Payments Not Automatic**
  - May be discontinued or reduced if Contractor is not achieving a level of performance commensurate with the provisional payment
- **Applicability Dates**
  - Applicable to solicitations issued on or after January 13, 2004
  - May apply to solicitations issued before January 13, 2004, as long as the contract awards occur on or after January 13, 2004
  - May apply to existing contracts with appropriate consideration

New DFARS 216.405-2 Language Provisional Award Fee Payments

U.S. AIR FORCE

- **Policies/Processes left to discretion of DoD Departments & Agencies**
  - **Applicability to Contracts with a Base Fee**
  - **Process for determining provisional payment amounts**
  - **Determination of appropriate situations for use**

- **Issues addressed in the Comments, Not in final policy**
  - **Not applicable to FPAF contract type**
    - **Requires deviation approval**
  - **Frequency of payments (but not more than monthly) to be determined by each DoD Department and Agency**

Differences Between DFARS & SMC

U.S. AIR FORCE

SMC Guidance	DFARS 216-405.2
Not more frequently than quarterly	Not more frequently than monthly
Not greater than 80% of the fee allocated to the current period or ... the amount anticipated to be awarded based upon prior history, whichever is less	Initial period ≤50% of the award fee available for that period Subsequent periods ≤ 80% of the evaluation score for the prior evaluation period (i.e. 72% of the award fee available for the current period , if Contractor earned 90% in the prior period, 90% x 80% = 72%)

Planned Change to SMC Policy

U.S. AIR FORCE

Proposed Changes to SMC Policy	Current SMC Guidance	Comparison to New DFARS
Ceilings on payments (50% initial; 80% of prior score on subsequent)	Not greater than 80% of the fee allocated to the current period or… the amount anticipated to be awarded based upon prior history, whichever is less	Change to align with DFARS
Terminology change from “interim” to “provisional”	Called “interim”	Called “provisional”

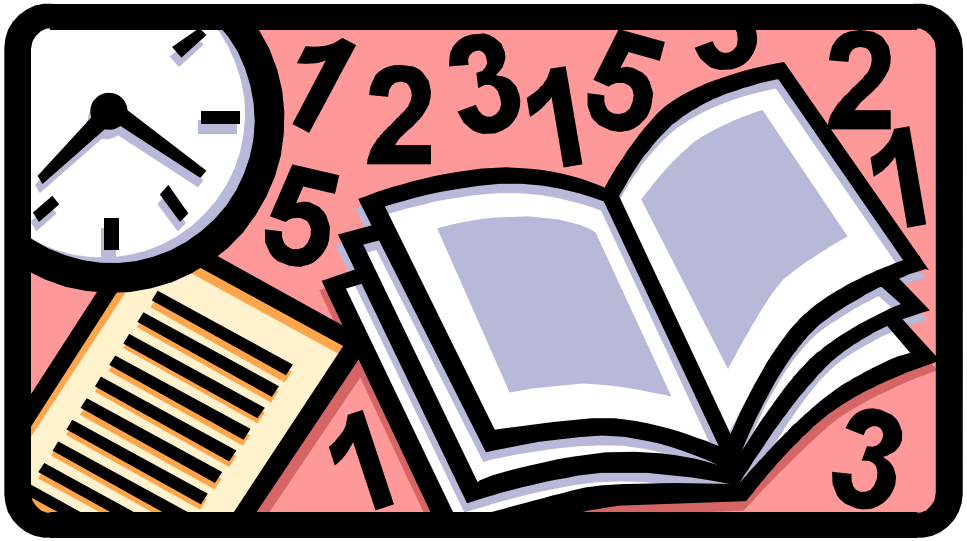
U.S. AIR FORCE

Other Areas in Current SMC Policy

Current SMC Policy – To Be Retained	Comparison to New DFARS
Applicable only to contracts with zero base fee	Silent – Policies/Processes left to DoD Departments & Agencies
Frequency of payments to “no more than quarterly” unless PK approves	More restrictive than DFARS
Payment determination to be coordinated through FDO (or designee)	Silent on process

U.S. AIR FORCE

The End



Backup

- **Backup**

U.S. AIR FORCE

Recommendation

- **Approve**
  - **SMC Info Letter on Provisional Award Fee Payments**
  - **Provisional Award Fee Payment Language for Award Fee Plans**

U.S. AIR FORCE

Quarterly, Not Monthly, Payments

- **Benefits of monthly payments may not be sufficient to warrant additional effort and cost involved with managing and administering the award fee process**
  - **Monthly modifications**
  - **Monthly evaluations to confirm Contractor's performance is commensurate with award fee amounts**
  - **PCO, Buyer, and PM resource issue**

- **Approval at PK level for deviation from "quarterly"**
  - **Gives PCO/Buyer negotiating leverage when approval is outside the immediate organization, and easier way to say "no" when the Contractor pressures**
  - **Requires PCO/Buyer/PM to thoroughly evaluate situation prior to requesting deviation**